

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

UNITED STATES OF AMERICA

v.

SAMI AMIN AL-ARIAN,
SAMEEH HAMMOUDEH,
GHASSAN ZAYED BALLUT,
HATIM NAJI FARIZ

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CASE NO.: 8:03-CR-77-T-30-TBM

**RESPONSE BY THE UNITED STATES
TO DEFENDANT FARIZ'S
TO COMPEL PRODUCTION OF TRANSCRIPTS**

The United States of America by Paul I. Perez, United States Attorney for the Middle District of Florida, submits the following response to defendant Hatim Naji Fariz's Motion to Compel Production of English-Language Transcripts.

1. On February 20, 2003, the government made public a 121 page, 50 count indictment charging defendant Fariz and seven co-defendants with various federal crimes. Count One of the indictment sets forth 256 overt acts which describe in considerable detail numerous communications which were obtained by the government through electronic surveillance of the defendants and others.

2. In May, 2003, at the direction of the Court, the government prepared a 400 page index of the items acquired during the course of the investigation. The government revealed that the intercepted communications were part of approximately

420

20,000 hours of communications in Arabic intercepted pursuant to the Foreign Intelligence Surveillance Act (FISA) during the course of a counter-terrorism investigation conducted by the Federal Bureau of Investigation (FBI). The government further informed the Court that most of these communications were legally minimized. Moreover, in previous proceedings, based on prior experience in wire-tap cases, the Court and the government have discussed with the defense attorneys the fact that most of the intercepted conversations are not relevant to any issue in the criminal case, and the Court has urged the defense to focus its resources on the intercepts in the indictment.

3. Nevertheless, because the communications constituted recorded statements of the various defendants and co-conspirators, the government agreed to make those statements available. The oral conversations described in the indictment were produced in May, 2003. The remaining oral conversations have been produced as they have become available. Production of the facsimiles is underway.

4. Upon learning that there were approximately 20,000 FISA intercepts in Arabic, the defense team as it was composed in May, 2003, decided to request through the Federal Defender budget a sufficient number of translators to translate and transcribe the entire 20,000 hours. We have now been advised that the Federal Defender budget authority has disapproved that request. Perhaps the Federal Defender budget authority would approve a less extravagant request.

5. In a letter to the Federal Defender dated January 12, 2004, we made the following statements:

(a) We do not have any records for any of the communications which were minimized;

(b) We acknowledged that we have a Rule 16 obligation to provide transcripts of translated conversations which we intend to offer in our case-in-chief at trial;

(c) Transcripts for use in Court are being prepared; and,

(d) We denied that we have any legal obligation to provide drafts of transcripts or summaries or analysis of FISA intercepts.

6. In this same letter, we advised the Federal Defender that we had prepared an analysis of the FISA intercepts which had been documented (as opposed to minimized) by the FBI. We identified approximately 800 FISA intercepts (estimated to be no more than 200 hours) which we believe to be truly germane to the criminal case. To facilitate trial preparations and to expedite the trial itself, we offered to waive the attorney work product privilege and make that list (which contains annotations) available to the defense if the defense would agree to a plan to exchange proposed transcripts. The plan, which we first proposed to counsel for defendant Al-Arian in December, 2003, provided that we would submit our proposed transcripts in batches. Upon receiving a batch, the defense, pursuant to Fed. R. Crim. P. 16(b), would submit to us any competing transcripts within 14 days. The parties would proceed batch by batch until the process is completed. This plan is exactly the sort of procedure contemplated by United States v. Le, 256 F.3d 1229, 1238 (11th Cir. 2001). Le has

been applied to factual situations very similar to what we are confronting in this case. See e.g., United States v. Cruz, 765 F.2d 1020, 1023 (11th Cir. 1985) (court applies Le procedure to transcripts in which the interpretation of the words used was the true issue, not the translation of the words themselves). While the Le procedure requires the government to produce its transcripts prior to trial, it also necessarily implies that the government will receive the proposed defense transcripts prior to trial. In a curt response, counsel for Al-Arian rejected our proposal.

7. Although it is not clear from defendant Fariz's motion, if it is his position that the government should, at least, be required to produce every single transcript for every communication it intends to offer as evidence at trial before he produces a single competing transcript, then the government disagrees with that position. Given the anticipated number of communications for which transcripts will be necessary, it is totally unrealistic to expect that the parties can comply with the Le procedure if the government is required to produce all of its transcripts before the defense is required to produce any of its competing transcripts.

8. The government denies that it has any legal obligation to create transcripts of conversations which it does not intend to use at trial. The government further denies that it has any legal obligation imposed by the Brady/Giglio doctrine to create transcripts for review by the defense.

9. With respect to the documents in Hebrew, the overwhelming majority of those documents will not be offered as evidence at trial. The government does not anticipate creating translated transcripts of documents it does not intend to offer into evidence or use at all. Nevertheless, the Discovery Index does briefly describe in

English what the contents of Israeli documents are. Once the Israeli government releases those documents for our use during the trial, the defense can employ a translator to review them with the Index as a guide to relevancy and importance.

10. Thus, defendant Fariz's motion should be denied and the government's proposal should be implemented in order to comply with the Le procedure.

Respectfully submitted,

PAUL I. PEREZ
United States Attorney

By: 
Terry A. Zitek
Executive Assistant U. S. Attorney
Florida Bar No. 0336531
400 North Tampa Street, Suite 3200
Tampa, Florida 33602
Telephone: (813) 274-6000
Facsimile: (813) 274-6246

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by U.S. mail this 14th day of January, 2004, to the following:

William B. Moffitt, Esquire
Asbill Moffitt & Boss, Chtd.
The Pacific House
1615 New Hampshire Avenue, N.W.
Washington, DC 20009
Counsel for Sami Amin Al-Arian

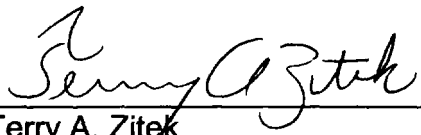
Linda Moreno, Esquire
1718 E. 7th Avenue, Suite 201
Tampa, Florida 33605
Counsel for Sami Amin Al-Arian

Stephen N. Bernstein, Esquire
Post Office Box 1642
Gainesville, Florida 32602
Counsel for Sameeh Hammoudeh

Bruce G. Howie, Esquire
5720 Central Avenue
St. Petersburg, Florida 33707
Counsel for Ghassan Zayed Ballut

Kevin T. Beck, Assistant Federal Public Defender
Federal Public Defender's Office
400 North Tampa Street, Suite 2700
Tampa, Florida 33602
Counsel for Hatim Naji Fariz

Wadie E. Said, Assistant Federal Public Defender
Federal Public Defender's Office
400 North Tampa Street, Suite 2700
Tampa, Florida 33602
Co-Counsel for Hatim Naji Fariz


Terry A. Zitek
Executive Assistant U. S. Attorney